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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,955	12/04/2001	Marc Ivor John Beale	MSL-1	3437

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7590

06/14/2010

EXAMINER
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SHAPIRO, LEONID

ART UNIT	PAPER NUMBER
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2629

MAIL DATE	DELIVERY MODE
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06/14/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/980,955	<b>Applicant(s)</b> BEALE, MARC IVOR JOHN	
	<b>Examiner</b> Leonid Shapiro	<b>Art Unit</b> 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,5,10,15,21,23,24 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-9,11-14,16-20,22,25-33 and 35-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1,3,6-9,12,14,16-20,22,25-29,31-33,35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Vayda et al (5,745,717)** in view of McCloud (5,808,567).

As to claims 1,20,22, 25,39 **Vayda et al (here in after Vayda)**, discloses a communication system comprising: means defining a communication region having associated therewith a plurality of symbols (figs.3-6,8-11.For example see fig.5 “*EDIT,PRINT, TOOLS,SET-UP*” (col.6, lines 23-45) and being responsive to a user controlled pointing device (fig.7 (713)) whereby a desired symbol can be selected by detecting movement of the pointing device along a predetermined bearing with the communication region (col.7, lines 9-34), being offset relative to the location of the symbol to be selected (col.7, lines 35-44,see where the symbols “*EDIT,PRINT, TOOLS,SET-UP*” are angularly separated and tolerance (or offset) is inherent in such latitude of movement).

**Vayda** teaches system being responsive to said user-controlled pointing device independent of the location within said communication region at which movement along said predetermined bearing commences (col. 4, lines 41-45).

Vayda does not disclose the predetermined bearing being substantially parallel to a direction of the desired symbol of the like relative to a central region of the communication region.

McCloud teaches the predetermined bearing being substantially parallel to a direction of the desired symbol of the like relative to a central region of the communication region (in reference movement from letter A to G is parallel to movement from E to H)(figs. 10-11, col. 9, lines 40-57).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate teachings of McCloud into Vayda reference in order to input information into a large variety of different electronic devices (col. 1, lines 51-53 in the McCloud reference).

Notice that finger on touch pad, mouse are user-controlled pointing device independent of the location within said communication region at which movement along said predetermined bearing commences versus key board dependable on location.

As to claim 39, McCloud teaches defining a plurality of communication regions each substantially in the form of a square having symbols associated therewith substantially at comers of the square and substantially midway along each side of the square, each communication region (in reference letters A to G)(fig. 10).

As to claims 3, 6-8, **Vayda** discloses a plurality of symbol entry regions are provided each having associated therewith a plurality of symbols (fig. 5 *EDIT*, *PRINT*, *TOOLS*, *SET-UP* ) and each being responsive to the user-controlled pointing device whereby a desired symbol can be selected by movement of the pointing device along the predetermined bearing within the region with which the desired symbol is associated (see, col7, lines 9-44).

As to claim 9, **Vayda** furthermore teaches two sets of communication regions are provided (for example see fig.5 (*EDIT*, *PRINT*)).

As to claims 12 and 31, **Vayda** teaches means is provided for selecting further symbols or the like by employing a different form of movement form that require to select from the basic symbols (see, col.15, lines 35-46 , col.16, lines 41-50,“using scrolling” , col.17, lines 15-67).

In regard to claims 14,31-33, **Vayda** the symbols or the like may be selected on the basis of the speed of movement of the pointing device (col.7, lines 35-44) or combination of movements (see, col.15, lines 35-46 , col.16, lines 41-50,“using scrolling” , col.17, lines 15-67). It is obvious that the selection is based on how fast you move the input device.

As to claims 16-18, 35-37, **Vayda** teaches that the combination movement includes a linear movement in a first direction that is and/or end thereof or reversing the first direction (for example see, fig.5. linear movement direction to select “EDIT” and then in reverse direction to select “TOOL”) or two sequential linear movements at a

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predetermined angle to each other (fig.11, two sequential linear movements “A” and “F”).

As to claims 19 and 38, **Vayda** teaches that the region or the regions are touch screen (see, fig.7, col.16, lines 41-50).

As to claims 26,27,28,29,40 **Vayda** discloses having three communication regions, each regions having associated therewith a plurality of symbols (fig.11 “ABCDEF”; “GHIJK” etc.), a desired symbol or the like being selected by movement within the region having the desired symbol or the like associated therewith in a predetermined direction relative to the desired symbol or the like (for example in fig.11 symbols “A” ,”B”, “C” or “D” can be selected within the region).

2. Claims 11 and 13,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Vayda**, McCloud in view of **Kinawi et al** (6,545,669)

As to claims 11 and 13,30, **Vayda** also discloses means is provided for selecting a further symbol or the like arranged within an area encompassed by each region (see, fig.11 (ABCDF), col.10, lines 30-42).

**Vayda**, McCloud do not expressly detailed the selection is done by **tapping** the area within the desired region.

However, the patent of **Kinawi et al** clearly states that it is well known for touch screen display system to select symbols by tapping the desired region (see, col.2, lines 7-20, col.5, lines 51-63).

It would have been obvious to one skill in the art at the time of the invention was made to have been motivated to substitute **Kinawi et al.** tapping method of selecting an object with **Vayda**,McCloud system of selection system in order to manipulate objects (col. 1, lines 9-15 in **Kinawi et al.** reference).

### ***Response to Arguments***

3. Applicant's arguments filed 04/26/10 have been fully considered but they are not persuasive:

On page 4, 2<sup>nd</sup> paragraph of Remark, Applicant's stated that it is evident that McCloud does not select symbols as a result of movement in a radial direction, as in Vayda, nor does McCloud select symbols as a result of movement along a bearing parallel to a direction of the desired symbol relative to a central region of the communication region, as required by the present invention. Instead, McCloud requires movement in a direction *perpendicular* to the plane of the communication region in order to apply sufficient pressure to make a contact and to operate a switch pad. However, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed Cir. 1986).

On pages 4, last paragraph of Remark, Applicant's stated that McCloud resides in a field of art that is nonanalogous to that of Vayda and to the present invention. It would not have been obvious to one skilled in the art to modify the teaching of Vayda with that

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of McCloud, and the proposed combination must fail. However, in response to applicant's argument that McCloud is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, be reasonably pertinent to the particular problem with which the applicant was concerned.

On page 5, 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs of Remark, Applicant's stated that According to the teaching of Vayda, movement from a focus position at letter E, toward letter H, would result in selection of letter H. Vayda does not consider movement corresponding to movement from letter A toward letter G, but Vayda does require movement from a focus position. So if letter A is now considered to be the focus position, then movement toward letter G will select initially letter D and (presumably) subsequently letter G. In accordance with Vayda, movement from a focus position at letter A will not select letter H, and movement that does not start from a focus position will not select any letter. Therefore, with letter A as the focus position and moving toward letter G, Vayda is devoid of any teaching for selection of the letter H. The Examiner's contrary suggestion is clearly in error. However, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed Cir. 1986).



***Telephone Inquire***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid Shapiro whose telephone number is 571-272-7683. The examiner can normally be reached on 8 a.m. to 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe can be reached on 571-272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. S./

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06/08/10

/Richard Hjerpe/

Supervisory Patent Examiner, Art Unit 2629